

Article
for
Broadcast Daily
by
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FREEDOM OF
COMMERCIAL SPEECH

Television is the ultimate selling tool because it is the most effective medium of communication outside of a face-to-face presentation. Thus, it is not surprising that various groups both seek access to the airwaves to promote their own viewpoints and seek to stifle presentation of views with which they disagree. As a member of the Federal Communications Commission, I have sought to limit government intrusion into licensee's editorial control and have supported the position that the first obligation of government should be not to inhibit the free flow of information which is the underlying purpose of the First Amendment.

Broadcast advertising, however, is in a particularly precarious position on the First Amendment ladder. Free expression of broadcast advertising messages are endangered both because advertising is "commercial" speech that has often been subject to less stringent First Amendment protection than other types of speech and because these messages are delivered over the broadcasting medium, where regulation in the name of the First Amendment unfortunately remains the standard.

In addition to the legal arguments against restricting commercial speech, there is a sound practical reason for encouraging free expression of broadcast advertising messages. As Congress debated what form the commercial broadcasting industry should take, there were some important choices to be made. One of these choices was whether broadcasting in the United States would be a "common carrier" public utility type of industry with its time being available and being sold on a first come, first serve, basis at rates fixed by a government agency. Congress emphatically rejected this choice and opted instead for a risk capital private enterprise system supported by advertising.

In my view, advertising played a crucial role in the development of commercial broadcasting to where there are today over 8390 radio and 892 television stations providing broadcast services to the people of this country. Without advertising, the American system of broadcasting as we know it would most

assuredly and completely collapse. In fact, the thought crosses my mind that advertising may well be this nation's principal guarantee against a government supported and controlled broadcast industry. Advertising underwrites the programming, the uncensored news and other services provided by the most varied and sophisticated broadcasting service in the world.

Despite what I regard as sound legal and policy arguments in favor of full protection for commercial broadcast speech, it is a fact of life that broadcasters can expect efforts to continue to restrict certain types of advertising. A current example is the campaign against alcohol advertising on broadcast media now being conducted at the Federal Trade Commission.

I am sympathetic to the ultimate objectives of public interest groups who want to reduce the incidences of drunk driving and teenage alcoholism. However, past experience has shown that the suppression of commercial speech does not remedy the problem. A case in point is the ban on cigarette advertising that was applied exclusively to the broadcast media. In my opinion, the resolution of the issues raised by interest groups is not effected by the suppression of commercial speech, but rather by the continued development of messages and programs which inform the public on issues of public concern such as crime, alcohol and drug abuse, and drunk driving.

It is through a free exchange of ideas that people can best make informed decisions. Television can serve an important role in communicating messages pro and con on the subject of drinking as well as on any other issue. I do not believe, however, that television has the sinister capacity of being able to compel the audience to agree with the messages it delivers. I see no danger from the presentation of any messages on television that compares with the danger that results from efforts to censor the delivery of messages for "people's own good."

Aside from the theoretical rights associated with commercial broadcast speech, there are sound reasons why broadcasters should be concerned about demands for changes in the carriage of alcohol advertising. Broadcasters are members of the community, too -- generally very good members. They are aware of the problems associated with alcohol and drug abuse and have taken steps to address these issues both through public service announcements and other types of programming, including, in some cases, entertainment programming. I applaud the efforts of the broadcasting and advertising industries that have provided time and creative talents to inform the public on issues affecting public health and safety -- including the dangers of alcohol abuse. I applaud the continuation of these voluntary efforts to serve the public as well as the broadcasting and advertising industries.